

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
G. C. CASEBOLT,

Appellant,

v.

OLYMPIC AIR POLLUTION CONTROL  
AUTHORITY,

Respondent.

PCHB No. 79-187

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of civil penalties totaling \$500 for dust emissions allegedly in violation of respondent's Sections 9.05 and 9.23 of Regulation I, having come on regularly for formal hearing on July 29, 1980, in Lacey, Washington, and appellant G. C. Casebolt, representing himself, and respondent Olympic Air Pollution Control Authority appearing through its attorney, Fred D. Gentry, with William A. Harrison, presiding, and the Board having considered the exhibits, records and files herein, and having reviewed the Proposed Order of the presiding officer mailed to the parties on the


1 6th day of August, 1980, and more than twenty days having elapsed  
2 from said service; and

3 The Board having received exceptions to said Proposed Order and  
4 the Board having considered the exceptions and denying same, and  
5 being fully advised in the premises, NOW THEREFORE,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed  
7 Order containing Findings of Fact, Conclusions of Law and Order dated  
8 the 6th day of August, 1980, and incorporated by reference herein  
9 and attached hereto as Exhibit A, are adopted and hereby entered as  
10 the Board's Final Findings of Fact, Conclusions of Law and Order herein.

11 DATED this 1<sup>st</sup> day of October, 1980.

12 POLLUTION CONTROL HEARINGS BOARD

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14 NAT W. WASHINGTON, Chairman

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18 DAVID AKANA, Member

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
G.C. CASEBOLT,

Appellant,

v.

OLYMPIC AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB No. 79-187

PROPOSED FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of civil penalties totaling \$500 for dust emissions allegedly in violation of respondent's Sections 9.05 and 9.23 of Regulation I, came on for hearing before the Pollution Control Hearings Board convened at Lacey, Washington, on July 29, 1980. Hearing examiner William A. Harrison presided alone. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant, G.C. Casebolt, appeared and represented himself. Respondent appeared by its attorney, Fred D. Gentry. Reporter Marilyn

EXHIBIT A

1 S. Mitchell recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were examined. From  
3 testimony heard and exhibits examined the Pollution Control Hearings  
4 Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, pursuant to RCW 43.21B.260 has filed with this Board a  
8 certified copy of its Regulation I containing respondent's regulations  
9 and amendments thereto of which official notice is taken.

10 II

11 Appellant, G.C. Casebolt, purchased acreage in Thurston County  
12 adjacent to Meridian Road near the Yelm Highway. He developed this  
13 acreage by constructing a road leading to a cul de sac, by making  
14 certain other improvements and by selling 5 acre or larger tracts to  
15 buyers who would build their own residences. While unpaved and under  
16 construction, the road was used both by Casebolt and individual lot  
17 owners or their building contractors.

18 III

19 Casebolt was advised by respondent, Olympic Air Pollution Control  
20 Authority (hereinafter OAPCA) to apply water to the road to prevent  
21 dust from becoming airborne as early as 1977. Subsequently he  
22 purchased a water sprinkling device. He also posted the road with a  
23 sign imposing a speed limit of 10 miles per hour. This speed limit  
24 was obeyed to a somewhat varying degree by those traveling the road.

25 IV

26 On June 8, 1979, in response to the complaint of a lot owner,  
27

OAPCA's inspector visited the site, arriving at 12 noon. He observed that driving his own car upon the cul de sac road raised dust over the top of his car although he drove at 10 miles per hour. There was no water system in operation and the road was extremely dry. Wind raised dust from the road independently of any vehicle traffic.

The inspector discussed the situation with two lot owners and a Notice of Violation was mailed to Casebolt on June 11, 1979, which was received. That Notice of Violation cited violation of OAPCA's Sections 9.05 and 9.23 and declared that a civil penalty would be assessed by later notice.

#### V

The OAPCA inspector and his superior, the OAPCA Control Officer, visited the site on approximately July 7, 1979, and discussed the situation with Casebolt, advising him to use the water sprinkler which he owned and to buy and use another like it, as well.

#### VI

On July 9, 1979, OAPCA's inspector again visited the site in response to a complaint of a lot owner, arriving at 2:10 p.m. He then observed a cement truck passing along the road raising substantial quantities of dust. He also observed the sprinkler which Casebolt owned and had present, but which was not in operation. The road was not damp.

A Notice of Violation was mailed to Casebolt on July 9, 1979, citing violation of OAPCA's Sections 9.05 and 9.23 and declaring that a civil penalty would be assessed by later notice. The Notice of Violation was received by Casebolt.

1 On October 6, 1979, Casebolt received a Civil Penalty Assessment  
2 of \$500 for the alleged violations of both June 8, and July 9, 1979.  
3 From this appellant appeals.

4 VII

5 Any Conclusion of Law which should be deemed a Finding of Fact is  
6 hereby adopted as such.

7 From these Findings the Board comes to the following

8 CONCLUSIONS OF LAW

9 I

10 Section 9.05 of OAPCA's Regulation I provides, in pertinent part:

11 (d) Fugitive particulate material. Reasonable  
12 and/or appropriate precautions shall be taken to  
prevent fugitive particulate material from becoming  
airborne;

13 (1) . . .

14 (2) When constructing, altering, repairing or  
demolishing a building; or road;

15 Casebolt was constructing the road in question during times pertinent  
16 to this appeal. Particulate matter is defined as any solid which is  
17 capable of being windblown or suspended in air, Section 1.07 of OAPCA  
18 Regulation I, and includes dust. Fugitive particulate matter is that  
19 generated from points other than an opening designed for emissions  
20 such as a stack. Section 9.05(d) of OAPCA Regulation I. By failing  
21 to employ a water sprinkling or comparable system for suppression of  
22 dust, appellant failed to take the reasonable precautions called for  
23 and thus twice violated Section 9.05, once on June 8, and once on July  
24 9, 1979.

25  
26 PROPOSED FINDINGS OF FACT  
27 CONCLUSIONS OF LAW AND ORDER

II

Section 9.23 of OAPCA's Regulation I provides:

No person shall cause or allow the emission of an air contaminant or water vapor, including an air contaminant whose emission is not otherwise prohibited by this Regulation, if the air contaminant or water vapor causes detriment to the health, safety, or welfare of any person, or causes damage to property or business.

Proof offered in support of this alleged violation included the testimony of one lot owner who resided 400' away from the road at the time in question, and who did not testify to any unreasonable interference caused to her by the dust on the dates in question. There were also written complaint forms completed on various dates by persons who did not appear at this hearing. The evidence is insufficient to prove a violation of Section 9.23.

III

Appellant urges that a rule of the Department of Ecology, WAC 173-400-040, requires quantitative measurements of dust opacity to sustain a violation in this case. We disagree. The rule referred to, WAC 173-400-040, (and its equivalent Section 9.03 of OAPCA Regulation I) is simply another rule for the control of air pollution. The rule requiring reasonable precautions to prevent airborne dust, Section 9.05 of OAPCA Regulation I, is not made inapplicable for failure to prove an element of another rule. See Sitner v. Seattle, 62 Wn.2d 834 (1963).

IV

Appellant could have been assessed \$500 in civil penalties for his two violations of Section 9.05. RCW 70.94.431. He had ample advance

1 warning to sprinkle the road and thereby exercise reasonable  
2 precaution to prevent airborne dust. Because, however, an unspecified  
3 amount of penalty is premised upon the alleged violation of Section  
4 9.23, not proven, the penalty should be mitigated by suspension.

5 V

6 Any Finding of Fact which should be deemed a Conclusions of Law is  
7 hereby adopted as such.

8 From these Conclusions the Board enters this

9 ORDER

10 The civil penalties totaling \$500 are affirmed; provided, however,  
11 that \$150 of the penalty is suspended on condition that appellant not  
12 violate respondent's Regulations for a period of one year from the  
13 date of appellant's receipt of this Order.

14 Done at Lacey, Washington, this 6<sup>th</sup> day of August, 1980.

15 POLLUTION CONTROL HEARINGS BOARD

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18 WILLIAM A. HARRISON  
19 Presiding Officer  
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